

22 JUL 1959

OGC Has Reviewed

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Reduction in Force

1. On 22 July [redacted] of my office and I talked with Mr. Donald E. MacGuineas, Chief, General Litigation Section, Department of Justice, about the legal aspects in applying a reduction in force to this Agency, establishing criteria therefor separate and different from those set forth in the Veterans Preference Act [redacted]

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3. Mr. MacGuineas stated that if the Director decided that a reduction in force should be conducted in this Agency under criteria different from those in the Veterans Preference Act and was necessary and advisable in the national interest the Department of Justice would be prepared to defend separations under such a program in court and believed that such defense would be successful. This assumes, of course, that the program is rational and specific and that we follow our own regulations meticulously. From a strictly legal viewpoint, therefore, we have assurance that such a program could be carried out. The political and practical aspects would have to be very carefully considered before any such program was so much as announced.

s/ Lawrence R. Houston

OGC:LRH:jeb

LAWRENCE R. HOUSTON
General Counsel

cc: Acting IG
Director of Personnel

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Rev. 16

30 April 1959

MEMORANDUM FOR THE RECORD

SUBJECT: Reduction in Force

1. The following is a discussion of Reduction in Force (RIF) including the basic law (Veterans Preference Act of 1944) applying to government in general; CIA and Civil Service Commission Regulations; previous CIA handling;

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[REDACTED] This is preliminary to a decision as to whether the question should be submitted to the Attorney General for his opinion [REDACTED]

2. First of all, it is noted that Agency regulations make no reference to RIF procedures other than in R [REDACTED] paragraph 1a wherein it is stated that "This regulation governs the separation of Agency employees for all reasons except reduction in force, entry into military service. . . , etc." Since no further Agency regulatory reference is made to a RIF procedure we will look at the basic law and Regulations and Procedures promulgated thereunder by the Civil Service Commission and published in the Federal Personnel Manual (FPM). Reduction in Force is defined by the Civil Service Commission in Chapter R-3-2, Section 1 of FPM as follows:

"Reduction in force means the involuntary separation of an employee from a duty and pay status for more than 30 days, by furlough or by separation from the rolls, in order to reduce personnel or to make positions available for the placement of persons entitled to restoration or reemployment after military service or upon exercise of reemployment rights. The term does not apply to involuntary separations for other reasons. . . ."

The basic law is contained in Sec. 12 of the Veterans Preference Act of 1944 (June 27, 1944, c. 287, § 12, 58 Stat. 390, amended 1949 Reorg. Plan No. 5¹ effective August 19, 1949; 14 F.R. 5227, 63 Stat. 1067; 5 USCA 861) hereafter referred to as the Act. This reads in pertinent part as follows:

"In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: PROVIDED, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: PROVIDED FURTHER, That preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below 'good' shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings:. . . ."

CIA is not exempted from this statute.

3. Section 11 of the Act (5 USCA 860) authorizes the Commission to promulgate appropriate rules and regulations for the administration and enforcement of the provisions of the Act. Sec. 19 of the Act, as amended, (5 USCA 868) provides ". . . that any recommendation by the Civil Service Commission, submitted to any Federal agency on the basis of the appeal of any preference eligible, employee or former employee, shall be complied with by such agency." Part 20 of the Civil Service Laws, Rules and Regulations is entitled "Retention Preference Regulations for Use in Reduction in Force" and is found at page Z1-285 of the FPM. These regulations establish degrees of retention preference and uniform rules for reduction in force and, like the Act, are stated to apply to all civilian employees in the Executive Branch of the Federal Government except those whose appointments are required to be approved by the Senate and those appointed by the President. These regulations after setting forth certain definitions prescribe employee tenure groups, provide for the setting up of a retention register wherein all employees shall be entered in order of tenure group and according to retention credits, and provide that retention registers shall be available for inspection by employees. It is noted that employees with unsatisfactory performance ratings and those with temporary appointments of one year or less shall be removed first. Provision is also

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This plan abolished the office of Executive Director and Chief Examiner, the office of Secretary and the title of "President of the Civil Service Commission" and created the title of "Chairman, United States Civil Service Commission" and the office of Executive Director. The plan listed transfers of functions.

made for proper notice to employees; for a reemployment priority list and for appeals procedures to the Civil Service Commission whose Board of Appeals and Review is vested with authority to make the final decision. Chapter R-3 of the FPM describes in considerable detail in narrative form and with illustrations the procedures to be followed under the Retention Preference Regulations set forth in Part 20 referred to above, including the actual planning of a reduction in force; the establishing of retention preference records and competitive levels; determining standing; making the reduction in force; the handling of appeals to the Commission including the listing of the various grounds for appeals and the reemployment of former employees on reemployment priority lists.

4. The subject of Reduction in Force has received considerable attention from time to time in the Agency in past years. Material made available by the Regulations Staff of the Office of Personnel shows the subject was considered in 1949 and 1950 and that a proposed Reduction in Force regulation was drawn up in February 1952. Further drafting was suggested by the Personnel Director in a memorandum in September 1953, but apparently since then the subject has been more or less dormant, although it is understood that there have been isolated instances of the use of RIF procedures in connection with the termination of certain unwitting employees in the field.

5. It might be well at this point to list some of the advantages and disadvantages which would appear to accrue from the Agency's use of the RIF procedure under Sec. 12 of the Act.

a. Advantages:

- (1) The orderly, clear-cut procedures set up by Civil Service Regulations (Chapter R-3) and the assistance to be obtained therefrom and from other parts of the FPM (page Z1-285).
- (2) The advantage to the individual of not being discharged or terminated under a so-called "stigma"; he also has re-employment rights under the RIF procedure.

b. Disadvantages:

- (1) Complications because of security factors.
- (2) Administrative difficulties involved in setting up competitive levels in a career service.
- (3) Setting up of a retention register may be a task of some proportion.

(4) Reduction in Force may set in motion certain "bumping" rights of retained employees which could upset portions of the Agency's personnel structure.

(5) Vitally needed employees might be lost to the Agency in a RIF procedure due to having lower retention rights than less valuable employees.

6. At the risk of being partially repetitious, the following summary is set forth. Section 12 of the Act and the regulations made thereunder apply to all civilian employees in the Executive Branch, except those appointed by the President alone or with the consent of the Senate. The statute provides that in the selection of persons to be separated or demoted in a reduction in force program due effect shall be given to tenure of employment, military preference, length of service and efficiency ratings. It requires further that preference employees with efficiency ratings of "good" or better receive retention preference over all other "competing employees" without regard to length of service; those with ratings below "good" are retained ahead of competing nonpreference employees having equal or lower ratings. These general statutory directives are given content by Civil Service regulations classifying employees into groups with descending order of retention preference. Employees are to receive notice and an explanation in writing thirty days in advance of the proposed action, with right of appeal to the Civil Service Commission. The Commission's recommendation is binding on the employing agency.

7. The foregoing comments on accomplishing a RIF have been made solely in the light of the provisions of Sec. 12 of the Act (5 USCA 861) and in this connection attention is again invited to the language of that paragraph which refers to ". . . any reduction in personnel in any civilian service of any Federal agency. . . ." The question arises as to whether Sec. 102(c) of the National Security Act of 1947 may properly be used by the Director in accomplishing a RIF. The Federal courts, including the Supreme Court, have held that they will not disturb the proper use of discretion by a Federal official. It may well be that if the Director were to make a finding that a Reduction in Force in the Central Intelligence Agency were necessary or advisable in the interests of the United States, that the courts would uphold this use of his discretion. (In support of its use, attention is invited to the fact that the Civil Service Commission has ruled in the [] cases that the provisions of Sec. 14 of the Veterans Preference Act of 1944 (5 USCA 863) relating to separation for cause are not applicable to the separation of preference eligible employees under the authority of Sec. 102(c).)

Whether or not it would be politically advisable to use this means of accomplishing a RIF is another question. In this connection it is felt that the Director might be open to charges of having made an arbitrary and

capricious use of his discretionary power if he were to RIF a veteran who had superior retention rights under the Veterans Preference Act of 1944 over an employee who was retained. He might be accused of circumventing the will of

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CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP					
TO	NAME AND ADDRESS		INITIALS	DATE	
1	Mr Houston		<i>[Signature]</i>	5/4/59	
2					
3					
4					
5					
6					
ACTION		DIRECT REPLY		PREPARE REPLY	
APPROVAL		DISPATCH		RECOMMENDATION	
COMMENT		FILE		RETURN	
CONCURRENCE		INFORMATION		SIGNATURE	
Remarks: <p>Memo on RIF per your request</p> <p>(OK to furnish extra copy to [redacted] informally if he wishes?)</p> <p>yes, & tell him I would like to discuss with the TG before we do anything further or talk to anyone else. LNH.</p>					
FOLD HERE TO RETURN TO SENDER					
FROM: NAME, ADDRESS AND PHONE NO.				DATE	
<p><i>[Signature]</i></p>				<p>30 June 59</p>	
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